the act is that of the bank, and in the other that of the debtor." That the court was wrong on this feature of the case is clear from the *Studley* case. So far as there was money deposited for the particular purpose of paying the note, even though it may have been in the indirect manner of providing a fund to meet the check which paid the note, there would seem to have been a preference. But in going beyond that the court was wrong. R. W. A.

USE OF THE WRIT OF PROHIBITION TO PREVENT THE ENFORCEMENT OF A RESOLUTION BY A COMMISSION UNSEATING ONE OF ITS MEMBERS.—It is a well established principle of law that the writ of prohibition is in its nature a preventive and not a remedial measure. Though the principle itself seems plain and clear its application to a particular state of facts is fraught with no little difficulty and, as is well illustrated by a recent case in the Supreme Court of Michigan (*Eikhoff* v. *Charter Commission of City of Detroit,* 142 N. W. 746), is a frequent source of disagreement.

The Charter Commission of the City of Detroit, chose one Eikhoff to fill a vacancy in its membership, caused by the resignation of one of the commissioners. The appointee qualified and entered upon his duties as a member of the Commission. Because of certain statements made by him which tended to disgrace and humiliate the Commission and its members, a resolution proposing to vacate the seat of Eikhoff was introduced and taken under consideration by the Commission without any notice to or preferment of charges against him and without any hearing had. Pending the action of the Commission on this resolution Eikhoff filed a petition in the Supreme Court for a writ of prohibition to restrain the Commission from ousting him. Before the court acted on this petition and before any writ issued the Commission passed a resolution declaring the seat of the petitioner vacant and ousting him from membership in the Commission. Later a writ of prohibition enjoining the Commission from ousting the petitioner from membership therein, from depriving him of his rights as a member of the Commission and from interfering with the execution by the petitioner of his duties as a member of the Charter Commission was issued, and respondent, the Charter Commission, was required to show cause why the writ should be vacated. By a divided court (six justices favoring and two opposing the action) the writ was continued in force.

The main reason given by the dissenting justices for their disagreement with the majority of the court is that the act which the writ was issued to restrain had been done before the issuance of the writ, and that as the writ had not and could not perform any proper office it should have been vacated. These justices base their argument on the ground that the writ, though in form a continuing one enjoining interference with the petitioner in the performance of his duties, is really "dependent upon, and an elaboration of, the prohibition against taking action to unseat him," for to compel the Commission to recognize the petitioner as one of its members is in effect setting aside, by means of the writ, the judgment of the Commission.

As has been said, the writ of prohibition is preventive rather than reme-

dial in its nature and as a general rule it will not lie when the act proposed to be restrained has been done. It is issued for the purpose of arresting proceedings and cannot be used as a remedy for acts already completed. *State ex rel. Bassetti* v. *Judge,* 44 La. Ann. 1093, 11 So. 872; *State* v. *Judges,* 48 La. Ann. 1166, 20 So. 678; *State* v. *Potts,* 50 La. Ann. 109, 23 So. 97; *Hull* v. *Superior Court,* 63 Cal. 179; *Dayton* v. *Paine,* 13 Minn. 493; *People ex rel. Gould* v. *Commissioners,* 61 How. Prac. (N. Y.) 514; *United States* v. *Hoffman,* 4 Wall. 158, 18 L. Ed. 354. In the general principle that the writ is not the appropriate means to secure the annulment of proceedings already had, the dissenting justices were correct. *More* v. *Superior Court,* 64 Cal. 345, 28 Pac. 117. Their mistake arose in treating the act as wholly completed by the Commission when the writ was issued. It is true that the Commission had passed a resolution to oust the petitioner, but they had not put it into effect and it was really to prevent them from so doing that the writ was issued. The general rule is that even though the judgment has been rendered, if anything remains to be done by the body or person rendering the same to carry out or enforce it whereby the petitioner's interests may be prejudiced, a writ of prohibition will be granted to prevent such action. *State ex rel. Rodgers* v. *Rombauer,* 105 Mo. 103, 16 S. W. 695; *State ex rel. Ellis* v. *Elkin,* 130 Mo. 90, 30 S. W. 333, 31 S. W. 1037. In the principal case the writ would still prevent the Commission from refusing the petitioner the right to attend its meetings, to vote, etc. The fact that this will have the same practical effect as a reversal or suspension of the resolution of ouster should not defeat the application for the writ. *Cosby* v. *Superior Court,* 110 Cal. 45, 42 Pac. 460; *Havemeyer* v. *Superior Court,* 84 Cal. 327, 24 Pac. 121, 10 L. R. A. 627, 18 Am. St. Rep. 192; *State ex rel. Wynne* v. *Lee,* 106 La. 400, 31 So. 14; *People* v. *District Court,* 33 Colo. 293, 80 Pac. 908.

There is also an intimation in the dissenting opinion that the dissenting justices were not inclined to regard the removal of an officer for cause as a judicial act. There is some authority to support such a view. *Donahue* v. *County of Will,* 100 Ill. 94; *People* v. *District Court,* 6 Colo. 534; *Burch* v. *Hardwicke,* 23 Gratt. (Va.) 51; *State* v. *Bright,* 224 Mo. 514, 123 S. W. 1057, The courts of Michigan have clearly settled the question for their state in a contrary manner. *Speed* v. *Common Council,* 98 Mich. 360, 57 N. W. 406, 22 L. R. A. 842, 39 Am. St. Rep. 555; *People ex rel. Clay* v. *Stuart,* 74 Mich. 411, 41 N. W. 411, 16 Am. St. Rep. 644. The same view is taken by the courts of other jurisdictions. *State ex rel. Hart* v. *Common Council,* 53 Minn. 238, 55 N. W. 118; *People ex rel. Wheeler* v. *Cooper,* 57 How. Prac. (N. Y.) 416; *People* v. *Sherman,* 66 App. Div. (N. Y.) 231, affirmed (1902), 171 N. Y. 684. G. S.

How to Beat the Rule Against Perpetuities.—Many people seem to think that the lawyer's problem is not so much to know what the law is as to know how to get all they want while obeying the law to the letter. In the case of perpetuities the history of nearly a thousand years of our law shows an almost unbroken series of disastrous failures of the best-laid schemes to violate the public policy of freedom of alienation.